

From: anewton@duda.com  
Sent: Sunday, March 12, 2006 5:27 PM  
To: Thomas, Dexter  
Subject: PACA-EDI Issue

Attachments: ATTACHMENT.TXT; PACA Reg change response letter.pdf

Dexter,

I have attached a letter that has been composed on behalf of ProduceSupply.org, LLC regarding needed amendments to PACA regulations pertaining to the protection of trust rights for perishable suppliers. As the letter states, the execution of an eCommerce Trading Partner Agreement with appropriate PACA trust verbiage included seems to be the simplest and least expensive solution. And equally important is the requirement that a buying entity participate in the execution of this agreement upon request from any of their suppliers of perishable product.

Please note that this letter was also sent to the Produce Marketing Association and proposed regulation changes from that industry association may be similar.

Thanks.

Alan D. Newton

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February 26, 2006

**Produce Marketing Association**  
**Lee Mannering**  
**PMA Government Relations Manager**

Dear Lee,

In response to your request for comments regarding the possibility of modifying the current PACA regulations to ensure that perishable suppliers are able to maintain their PACA trust rights on all sales regardless of whether the customer is invoiced by paper or electronically, the **ProduceSupply.org** membership wanted to share their collective thoughts on the subject matter with the **PMA** and **USDA**.

The **PSO** membership consists of sixteen leading suppliers of fruits and vegetables to the retail, wholesale and the foodservice industry working to facilitate the adoption of industry supported eCommerce solutions.

**ProduceSupply.org** is a not-for-profit organization and is an altruistic endeavor. The group began meeting informally in October of 2000 and officially formed the **PSO, LLC** entity in July of 2001. The partnership includes the following produce suppliers:

- *Calavo Growers, Inc.*
- *Chiquita Brands Company, Inc.*
- *D'Arrigo Bros. of California*
- *The Oppenheimer Group*
- *DNE World Fruit Sales*
- *Driscoll Strawberry Associates, Inc.*
- *A. Duda & Sons, Inc.*
- *NewStar Fresh Foods, LLC*
- *Grimmway Enterprises, Inc.*
- *Idaho Grower/Shippers Assn.*
- *L & M Companies*
- *Nonpareil Corp.*
- *Sun World International, Inc.*
- *The Nunes Company, Inc.*
- *Domex Marketing Company*
- *Tanimura & Antle, Inc.*

On numerous occasions we, as a group, have discussed the lack of understanding as to what produce suppliers must do to ensure that they have PACA trust protection when utilizing eCommerce to conduct business. Since, to our knowledge, there has not yet been a PACA trust case brought to the courts where eCommerce was utilized for invoicing, the current regulations have not been tested. Some suppliers are sending the required PACA trust verbiage in their EDI invoicing transactions and others are sending monthly statements to customers detailing orders that are to be covered by the PACA trust. Both of these solutions if they, in and of themselves, do preserve the suppliers trust rights, are costly and require manual intervention. We would like to offer the following suggestion for consideration as an amendment to the PACA regulations to provide legitimate trust protection.

**Add a provision that would allow a perishable product supplier to request that a purchaser of their product who receives invoices from the supplier electronically execute a trading partner agreement between the two parties to specifically preserve the suppliers PACA trust rights. The content of the document should be developed as a template by the USDA in the same manner that was done with the requisite verbiage for a paper invoice. To reduce the amount of clerical handling by both parties, we would suggest that there not be any periodic renewal clause included in the agreement. Furthermore, we are proposing that the regulation be very clear that the receiver of perishable product who is invoiced for that product from the supplier does not have the right to refuse entering into the agreement with the supplier, as is the case today where the receiver does not have the right to demand that the supplier remove the PACA trust verbiage from paper invoices.**

We feel that this is a simplified solution that would work well for all participants in the perishables supply chain. Thanks for PMA's involvement in this important matter.

Very Truly Yours,  
**ProduceSupply.org, LLC**

Alan D. Newton  
Chief Operating Officer